

# MISSOURI CLEAN WATER COMMISSION MEETING

January 24, 2001

Holiday Inn Sunspree Resort, Lake Ozark, Missouri

## MINUTES

### Present

Thomas A. Herrmann, Chairman, Missouri Clean Water Commission  
Davis D. Minton, Vice-Chairman, Missouri Clean Water Commission  
Janice Schnake Greene, Commissioner, Missouri Clean Water Commission  
Arthur E. Hegi, Commissioner, Missouri Clean Water Commission  
Cosette D. Kelly, Commissioner, Missouri Clean Water Commission  
Kristin M. Perry, Commissioner, Missouri Clean Water Commission

Scott Alexander, Premium Standard Farms, Unionville, Missouri  
Chris Baker, Premium Standard Farms  
Dan Barbour, Barbour Concrete Company, Independence, Missouri  
James R. Barbour, Barbour Concrete Company, Independence, Missouri  
Lewis Barton, Premium Standard Farms  
Clifford J. Baumer, USDA-NRCS, Columbia, Missouri  
Gordon Belcher, Department of Natural Resources, Jefferson City, Missouri  
Tony Boone, Sharpe Land & Cattle Company, Payson, Illinois  
Lamar Bostwick, Department of Natural Resources, Jefferson City, Missouri  
Harry D. Bozoian, Assistant Attorney General, Jefferson City, Missouri  
Kurt Breeze, Festus/Crystal City, Festus, Missouri  
David Brennecke, Premium Standard Farms  
Matthew J. Brock, Premium Standard Farms  
Norman L. Brown, Department of Natural Resources, Rolla, Missouri  
Robert J. Brundage, Premium Standard Farms, Princeton, Missouri  
Bill Bryan, Assistant Attorney General, Jefferson City, Missouri  
Sandra Buckler, Premium Standard Farms  
Erman L. Call, Columbia, Missouri  
Cary Carmack, Premium Standard Farms, Green City, Missouri  
Mary Clark, Department of Natural Resources, Jefferson City, Missouri  
Matt Clark, Premium Standard Farms  
Randy Clarkson, Department of Natural Resources, Jefferson City, Missouri  
Joe Coleman, Sallee Ward Development, Kansas City, Missouri  
John Collins, Premium Standard Farms  
Shawn Colson, Premium Standard Farms  
David E. Curtis, Premium Standard Farms  
Larry W. DeBrot, Premium Standard Farms  
Cindy DiStefano, Department of Conservation, Columbia, Missouri  
Scott Dye, Ozark Chapter Sierra Club, Columbia, Missouri  
Terry Eaton, Kansas City Power & Light, Kansas City, Missouri  
Leo Ebel, Festus/Crystal City, St. Louis, Missouri

Marcia Evans, Premium Standard Farms  
J. Michael Flowers, Department of Natural Resources, Rolla, Missouri  
Mark Frazier, U.S. Army Corps of Engineers, Kansas City, Missouri  
Cliff Gauldin, Premium Standard Farms  
Chris Hamilton, USDA-NRCS, Columbia, Missouri  
Carol E. Hein, Premium Standard Farms  
Mike Henke, Premium Standard Farms  
Bob Hentges, Missouri Public Utilities Alliance, Jefferson City, Missouri  
Leslie Holloway, Missouri Farm Bureau, Jefferson City, Missouri  
Ron Hopes  
Ogle Hopkins, Department of Natural Resources, Jefferson City, Missouri  
John Howland, Department of Transportation, Jefferson City, Missouri  
Trae Humphreys, Premium Standard Farms  
Roy Jackson, Premium Standard Farms  
Glen Johnson, Premium Standard Farms, Unionville, Missouri  
Chris Jones, Premium Standard Farms  
Sallie Keeney, REGFORM, Jefferson City, Missouri  
Ed Knight, Director of Staff, Missouri Clean Water Commission  
Colonel Daniel W. Krueger, Memphis District Corps of Engineers, Memphis, Tennessee  
Richard J. Laux, Department of Natural Resources, Jefferson City, Missouri  
Randy Lemmons, Clay Conservation District, Piggott, Arkansas  
Bill Lindsey, Midwest Environmental Consultants, Springfield, Missouri  
Maxine Lipeles, Ozark Chapter Sierra Club, St. Louis, Missouri  
Jamie Lowrey, Premium Standard Farms  
Shannon Loyd, Premium Standard Farms  
John Madras, Department of Natural Resources, Jefferson City, Missouri  
Patrick W. Mahoney, Premium Standard Farms  
Bruce Martin, Department of Natural Resources, Springfield, Missouri  
David R. Melton, Sharpe Land & Cattle Company, Smithville, Missouri  
Ken Midkiff, Ozark Chapter Sierra Club, Columbia, Missouri  
Kevin Mohammadi, Department of Natural Resources, Jefferson City, Missouri  
Nate Moore, Johnson County Egg Farm, Knob Noster, Missouri  
Denis Murphy, The Doe Run Company, Viburnum, Missouri  
Deborah Neff, Assistant Attorney General, Jefferson City, Missouri  
Deryl Niffen, Premium Standard Farms  
Claire O'Laughlin, Ozark Chapter Sierra Club, St. Louis, Missouri  
Renee Parkhurst, Premium Standard Farms  
Doug Pauley, Premium Standard Farms  
Jim Penfold, Department of Natural Resources, Jefferson City, Missouri  
Kevin Perry, REGFORM, Jefferson City, Missouri  
N. William Phillips, City of Milan, Milan, Missouri  
John Pozzo, Ameren, St. Louis, Missouri  
David Rauhauser, Premium Standard Farms

Bernie Rains, Metropolitan St. Louis Sewer District, St. Louis, Missouri  
Dave Reece, U. S. Army Corps of Engineers, Memphis, Tennessee  
Stan Reigel, Sharpe Land & Cattle Company, Kansas City, Missouri  
Randy Sarver, Department of Natural Resources, Jefferson City, Missouri  
Phil Schroeder, Department of Natural Resources, Jefferson City, Missouri  
Brad Schwenneker, Premium Standard Farms  
Bud Sherman, Barbour Concrete, Springfield, Missouri  
Richard Simmons, Clay County Conservation District, Rector, Arkansas  
Chad Snapp, Premium Standard Farms, Princeton, Missouri  
Richard Snapp, Premium Standard Farms, Princeton, Missouri  
Terry Spence, Unionville, Missouri  
Megan Styles, Ozark Chapter Sierra Club, St. Louis, Missouri  
Robert Tisdale, U.S. Army Corps of Engineers, Memphis, Tennessee  
Kelly Tobin, Sallee Ward, Kansas City, Missouri  
Scott Totten, Department of Natural Resources, Jefferson City, Missouri  
Mark Trent, Premium Standard Farms, Unionville, Missouri  
Diane Waidelich, Secretary, Missouri Clean Water Commission  
Llona Weiss, Department of Natural Resources, Jefferson City, Missouri  
Michael D. Wells, USDA-NRCS, Columbia, Missouri  
Vance Whaley, St. Francis Drainage District, Piggott, Arkansas  
Robert Williamson, Kansas City Water Services, Kansas City, Missouri  
Gail Wilson, Department of Natural Resources, Jefferson City, Missouri  
Steven Woodring, City of Harrisonville, Harrisonville, Missouri  
Don Yoest, Department of Agriculture, Jefferson City, Missouri

Chairman Herrmann called the meeting to order at approximately 9:10 a.m. and introduced Commissioners Minton, Hegi, Greene, Kelly, and Perry; Director of Staff, Ed Knight; Assistant Attorney General, Deborah Neff; and Secretary, Diane Waidelich.

### **ADMINISTRATIVE MATTERS**

#### **Public Hearing on Proposed Amendments**

All witnesses were sworn in by the court reporter to testify at a public hearing held on proposed amendments to 10 CSR 20-6.011 Fees, 10 CSR 20-6.060 Water Quality Certification, 10 CSR 20-14.010 Classification of Concentrated Animal Feeding Operations Waste Management Systems, 10 CSR 20-14.020 Certification of Concentrated Animal Feeding Operation Waste Management System Operators, and 10 CSR 20-14.030 Renewal Training. A transcript of this hearing will be available for review at the office of the Missouri Clean Water Commission, Jefferson State Office Building, 205 Jefferson Street, Jefferson City, Missouri.

**Staff Recommendation on Festus/Crystal City Variance Request**

Mr. Laux, Water Pollution Control Program Permits Section, reported the requested variance is to vary from the requirements of 10 CSR 20-6.010(9)(F). This subsection prohibits the department from issuing permits which are in conflict with the requirements of an approved 208 Plan. Staff conducted an investigation of the request. Mr. Laux summarized the findings of the investigation.

1. The Cities of Festus and Crystal City together own and operate a sewage treatment facility consisting of two circular contact stabilization plants (in parallel) designed to treat 2.04 MGD.
2. The receiving stream, Platin Creek, is classified as a class "P" stream. The beneficial uses are listed in 10 CSR 20-7.031 as: livestock and wildlife watering, protection of warm water aquatic life, whole body contact recreation, boating, and industrial water uses. Although the use of whole body contact recreation is indicated, protection for this use has not been required in the permits previously because of the perceived nature of the receiving stream below the discharge which is subject to "backflow" from the Mississippi River.
3. The facility has experienced non-compliance and was issued an Abatement Order. The cities appealed the Abatement Order and the matter has been referred to a hearing officer.
4. On June 21, 1999, a Federal Consent Decree between the cities and The American Canoe Association was approved and entered as an Order of the United States District Court, Eastern District of Missouri. The Consent Decree requires, among other things, the upgrade of the treatment facility by December 2002.
5. A facility plan for the upgrade of these facilities has been submitted to staff. The review by staff indicated that the plan did not conform to the requirements of the "208" Plan as that plan requires the piping of the effluent to the Mississippi River if the "interim" facilities are to be eliminated or expanded. Staff informed the cities that the plan could not be approved as initially submitted.

Mr. Laux recommended preliminary approval and direction to the department to public notice the commission's intention to approve this request at the March meeting. Approval of the request as amended is recommended for a period not to exceed five years. Schedules for the completion of the initial upgrade and for providing a pipe to the Mississippi River which the cities proposed in the amended application appear to be acceptable and the major milestones should be included as an enforceable schedule in a revised National Pollutant Discharge Elimination System permit and in a settlement agreement that would resolve Appeal No. 324. Staff also recommended requiring the cities to submit annual progress

reports to the Commission as a condition of the variance on funding, designing, and building the upgraded facilities and effluent pipeline.

Commissioner Perry asked if this is a temporary measure while they do the upgrading.

Mr. Laux noted all variances are temporary measures in order to conform to the rule eventually. The pipeline construction would not occur when the upgrade would occur but would lag behind the upgrade of the facility.

Commissioner Perry asked about the plan for completion of both the pipeline and upgrade.

Mr. Laux responded the submittal includes a schedule for both the pipeline and the upgrade. One schedule is for the project they had already proposed and for which they have applied for a construction permit. They have not yet done any studies or looked at obtaining any property to run the pipeline for the other schedule.

Commissioner Hegi asked what the noncompliance issue was.

Mr. Laux noted there was noncompliance with the effluent limits of the permit and there were indications of sludge releases directly to Platin Creek.

Commissioner Hegi asked what the advantage is to running this to the Mississippi River.

Mr. Laux stated it is for protection of the creek downstream of the discharge. He continued this was the basis for the lawsuit filed by the American Canoe Association. Platin Creek did not meet Water Quality Standards downstream of the facility. The suit was to upgrade this facility so that it could meet standards.

Commissioner Hegi noted it seems like a poor way to solve a problem.

Mr. Laux responded the 208 Plan for the St. Louis metropolitan area is predicated on getting effluents out of small streams that run through towns and getting it all piped eventually to large facilities that would be discharging directly to the Missouri and Mississippi Rivers. The Metropolitan St. Louis Sewer District will eventually have interceptors carrying effluents to the Lower Meramec and eliminate some of their other facilities that discharge directly to the Meramec River. The new Meramec plant will discharge to the Mississippi.

Commissioner Kelly asked if this is untreated effluent discharging into the Mississippi.

Mr. Laux stated the upgraded facility would discharge its effluent into a pipeline and change its receiving stream from Platin Creek to the Mississippi River where there will be more dilution capacity.

Mr. Breeze, attorney for the city, reiterated the plan is to build a new plant. The variance request has been made so that after the new plant is in operation discharging treated effluent to Platin Creek will be upgraded to discharge to the Mississippi River in compliance with the 208 plan.

Mr. Laux reported that notification of the staff recommendation was made to the petitioner and the commission mailing list along with the American Canoe Association. If the variance is granted in March, staff will issue the construction permit so the upgrade can move forward in accordance with a court order.

Chairman Herrmann asked how the flood stage of the Mississippi impacts this plant.

Mr. Ebel, engineer for the city, responded it does impact the plant and also the relationship between this plant and the new flood protection levee being constructed by the Corps of Engineers. He noted hopefully the levee will provide a benefit to the treatment plant in terms of flood protection and reduce the cost and improve the operation. The cities can take advantage of the stormwater pump station that is part of the levee to pump their effluent into Platin Creek. Additional cost is involved if it has to be pumped to the River.

Mr. Laux recommended the commission direct staff to public notice the commission's intention to approve the variance request at the March meeting.

Commissioner Greene moved to **direct staff to proceed with public notice of the commission's intent to approve the variance request for Festus and Crystal City**; seconded by Commissioner Minton and unanimously passed.

#### **Staff Recommendation on Coventry Realty Variance Request**

Mr. Laux, Water Pollution Control Program Permits Section, reported that Coventry Realty has asked that this request be continued until the February meeting in order to allow time for them to submit additional information. If staff can review this information and modify the recommendation, it will be brought to the February meeting.

Commissioner Minton moved to **continue the Coventry Realty Variance Request to the February meeting**; seconded by Commissioner Greene and unanimously passed.

#### **Clean Water Intended Use Plan Project Description Modification**

Mary Clark, Water Pollution Control Program Financial Services Section, explained that the Platte County Regional Sewer District has requested the project description be amended in the FY 2001 Intended Use Plan for the Brush Creek project. The request was to add an administration building and a GIS computer system in the description. Ms. Clark reported there were no modifications that were not eligible costs in this request. The cost on the IUP

will not change because of the request. Staff review of the request found that all is eligible for SRF participation and staff expects this to be to the advantage of the applicant and the users of the Platte County Regional Sewer District. Ms. Clark asked that the commission amend the Brush Creek project description to include an administration building and a GIS system.

Chairman Herrmann asked how a GIS system will improve water quality.

Ms. Clark responded this will allow them to identify where operational problems are on the system. This is a countywide system and is spread out with a lot of small systems.

Chairman Herrmann noted it would be nice to have but it's not a necessary element to improving water quality. This money could be applied to some other small community.

Ms. Clark noted other large treatment facilities do use GIS.

Chairman Herrmann noted he does not recall the commission funding GIS in the past.

Ms. Clark stated she thought Duckett Creek has a GIS system. She noted there is a big push for operations to be using these types of systems in water districts because it allows identification of problems.

Commissioner Hegi asked if this is a countywide sewer district.

Ms. Clark responded it is countywide.

Commissioner Hegi asked if there is any plan to bring the rest of the county in on this GIS.

Ms. Clark said Platte County may be evaluating this but the sewer district is a separate entity from the county.

Chairman Herrmann stated the city of Springfield has been implementing a GIS system for the past several years and he thought the money came from sources other than water pollution control funds.

Commissioner Perry asked if the amount for the GIS was \$28,700 plus \$300,000 for an administration building with an educational facility.

Ms. Clark noted it is an administration building and they did do some water quality education for the public at their facility.

Commissioner Perry asked why they didn't ask for this upfront.

Ms. Clark responded Platte County is currently leasing their administration facility and this is a very fast growing area with prices going up. They evaluated the cost of building a new building at the new treatment site, purchasing an existing building, or continuing their lease. The most cost-effective option was to purchase an existing building.

Chairman Herrmann stated the request is for loan funds to be paid back instead of grant funds.

Commissioner Perry moved that **the Platte County Regional Sewer District Brush Creek project description be amended to include an administration building and GIS system;** seconded by Commissioner Greene and passed as follows:

Commissioner Greene-yes; Commissioner Hegi-yes; Commissioner Kelly-yes;  
Commissioner Minton-no; Commissioner Perry-yes; Chairman Herrmann-no.

**Commission Action on Matters to Be Referred to the Office of the Attorney General**

**Barbour Concrete Company**

Mr. Mohammadi, Water Pollution Control Program Enforcement Section Chief, reported Barbour Concrete Company manufactures precast concrete structures. The company has a general permit that authorizes stormwater discharge and dry weather discharge from collection and treatment of the wash down waters from the plant operations. It drains toward an unnamed tributary to the Little Blue River. Since 1998, there have been several citizen complaints called in concerning discolored water and residue accumulating in the road ditch adjacent to the facility. Investigations have revealed deposits of concrete residuals and turbid water pooling in the ditch due to sediment accumulations that are partially blocking the culvert. The water in the ditch has been found to be highly alkaline, beyond the pH limits in the general permit. The company proposed to install a berm at the south end of the property to dissipate the flow before it entered waters of the state. Staff indicated this would not be sufficient and recommended installation of a sedimentation lagoon and recycling of the runoff water. In February 1999 the company proposed extending the berm further, and stock piling of left over concrete crumbs and solids along the berm, and monthly monitoring. This proposal was accepted in April 1999, with the provision that no concrete or untreated washdown water was to be discharged into waters of the state. In August 1999, an inspection following another citizen complaint revealed that none of the proposed improvements to the facility had been installed. An inspection in November 1999 revealed that the proposed berm had been constructed. The concrete solids in the roadside ditch had been removed. It was found that there was still standing water in the ditch, even though there had been no recent precipitation. The company had encountered a spring near the southeast corner of its property, and installed a pipe to help drain it. The water in the ditch was tested and found to be alkaline with a pH of 11.15. Fresh concrete residuals were evident. Wastewater from concrete coring operations flowed indirectly into a constructed settling basin that intermittently discharges to the ditch. This type of discharge is not covered by the Missouri



State Operating Permit. An inspection in February, 2000 indicated that nothing had changed. Concrete residuals in the ditch were up to three inches thick, and the pH measurements ranged to a maximum of 11.81. Staff attempts to resolve the noncompliance through the process of conference, conciliation and persuasion did not result in resolution, therefore, Mr. Mohammadi recommended the matter be referred to the Office of the Attorney General.

Jim Barbour, Barbour Concrete Company, reported they manufacture sanitary sewer manholes and storm sewer catch basins used by contractors for projects in Kansas City. The company is located in the Little Blue Valley which Mr. Barbour indicated is a very poorly drained area with the south side of the property having tremendous drainage problems. Mr. Barbour added the company has been on this site for 36 years with other businesses coming in after them. He stated they have apparently reported them to various agencies. Mr. Barbour reported they have employed Bill Lindsey from Midwest Environmental Consultants and Bud Sherman from ESC Consulting Engineers to resolve the issues.

Bill Lindsey, Midwest Environmental Consultants, stated the department made an inspection in December 1999 and saw that the improvements made were not working. He noted pH problems and wash off from ready mix plants is a common problem. Mr. Lindsey stated he planned to work with the Barbours in late February to early March to see what kind of technologies were available and then develop a proposal. An inspection was completed February 4 and no changes had yet been made. A proposal for a new sedimentation basin, concrete paving, and some best management practices has been provided to staff. A final engineering design was submitted May 22, 2000. Mr. Lindsey noted a letter was received on May 26 with a proposed fine. He noted the regional office did not respond to the proposed design until December 8, 2000.

Commissioner Perry questioned if the plans were approved in the December 8 letter.

Mr. Lindsey responded they were approved but further information was requested. He continued the Highway Department has been doing a lot of grading and site drainage work in that area. Part of the problem is that some culverts going under the highway were rebuilt with the inverts of the culverts being higher than the inverts of the ditches.

Bud Sherman, ESC Engineers and Architects, reported the Barbour's contacted him this week for assistance in resolving this situation. He continued that the Barbours desire to work through this without going to the Attorney General's Office. Mr. Sherman asked the commission to allow them time to work out the problems.

Dan Barbour, General Manager for Barbour Concrete Company, asked for additional time since the proposal was sent to the department in May with no response being received until December. He noted there has been no opportunity for corrections with the weather conditions over the past month.

Chairman Herrmann noted counsel has advised this matter can be discussed in closed session in order to possibly conclude it at this meeting.

Mr. Mohammadi showed pictures from the site to the commission.

Commissioner Hegi asked why the department did not respond to the proposal until December.

Mr. Mohammadi responded this has been going on since 1998 and there still is not an approved plan to address the runoff from the site. The department has commented and is still waiting for the response from the engineer. Mr. Mohammadi stated this is what is considered a habitual violator, not a one-time event.

Commissioner Hegi asked why they did not hear back from the department until December if the proposal was submitted in May.

Mr. Mohammadi stated he has not looked at the file to be able to answer that. He noted as of today they still have not responded to the letter that was sent in December.

Mr. Dan Barbour noted they did not respond because they were waiting to resolve the enforcement issue.

Mr. Sherman noted the presence of the Barbours and their consultants shows a commitment to resolve the problems.

Mr. Jim Barbour stated one neighbor has filed many complaints including with the Highway Department. He continued he has met with them and they indicated they have done nothing wrong. The Highway Department gave them a permit to maintain the right-of-way. This same individual turned them in to the City of Independence Health Department. The site was toured and it was determined the ditch that has been overexcavated maintains a level of water which is a mosquito hatchery which is a Health Department issue.

Chairman Herrmann stated the matter will be discussed during closed session and the commission will then come back into open session with the outcome.

### **Oak Grove Trailer Park**

Mr. Mohammadi, Water Pollution Control Program Enforcement Section Chief, reported Oak Grove Trailer Park in Franklin County is an 18-trailer mobile home park. The domestic wastewater at the trailer park is biologically treated through a septic tank and sand filter treatment system. The receiving stream for the treated wastewater is an unclassified losing tributary of Winsel Creek. Since 1992, Oak Grove Trailer Park exceeded permit limits for biological oxygen demand on at least 16 occasions, fecal coliform 9 times and total

suspended solids 3 times. During that period, the owner has been instructed to make the necessary modifications to prevent future exceedances or connect to a local sewer on at least 12 occasions. Although the Village of Oak Grove has indicated its intent to eventually extend sewer to the area, no confirmed date of construction has ever been established. In the interim, all compliance schedules issued to Oak Grove Trailer Park have required submission of an engineering report if connection to a local sewer district is not completed. Several compliance schedules have expired since 1992, however, no connection has occurred and no engineering report has been submitted. Oak Grove Trailer Park's operating permit expired April 9, 2000, and no application has been received. Staff attempts to resolve the noncompliance through conference, conciliation and persuasion has not resulted in resolving the matter. Mr. Mohammadi requested the matter be referred to the Office of the Attorney General.

Chairman Herrmann asked what the local sewer district is.

Mr. Mohammadi replied the Village of Oak Grove is sewerd.

No one was present representing the Oak Grove Trailer Park.

Commissioner Hegi asked if there had been no response.

Mr. Mohammadi responded staff has heard nothing from the Oak Grove Trailer Park.

Commissioner Minton moved **to refer Oak Grove Trailer Park to the Office of the Attorney General** for appropriate legal action; seconded by Commissioner Perry and unanimously passed.

### **Waynesville Super 8**

Mr. Mohammadi, Water Pollution Control Program Enforcement Section Chief, reported on the Waynesville Super 8 motel in Pulaski County. The domestic wastewater at the motel is biologically treated through an extended aeration treatment plant with chlorination. In August, 1995, the Waynesville Super 8 was referred to the Water Pollution Control Program Enforcement Section due to continuing authority issues. Because of these issues, the Missouri State Operating Permit was denied. Super 8 appealed and, through a Clean Water Commission hearing, the Missouri State Operating Permit was issued to the Waynesville Missouri Ltd Partnership in June, 1998. Early in 1999 the motel was purchased and the Missouri State Operating Permit was transferred into the new owner's name. Due to pending sewer extension to the area by the Pulaski County Sewer District, the Water Pollution Control Program allowed additional time for Super 8 to connect or make modifications to bring the facility into compliance. Many delays have occurred within the district and now connection appears at least two years off, if at all. The problems at Super 8's wastewater treatment facility have grown steadily worse. Since January 1999, five Notices of Violation

have been issued to Super 8 for exceeding effluent limits. In August, 1999 the manager, reported making repairs to the facility, but the violations continue. In September, 2000, an offer to settle was made to the new owner but no response was received by the department. In November, 2000, a second offer to settle was made to the owner but again no response was received. The facility continues to be in violation of its Missouri State Operating Permit limits for biochemical oxygen demand and fecal coliform. Staff attempts to resolve the noncompliance through conference, conciliation and persuasion has not resulted in compliance. Mr. Mohammadi recommended referral to the Attorney General's Office.

No one was present representing the Waynesville Super 8 Motel.

Commissioner Kelly moved to **refer the Waynesville Super 8 Motel to the Office of the Attorney General** for appropriate legal action; seconded by Commissioner Minton and unanimously passed.

#### **City of Excelsior Estates**

Mr. Mohammadi, Water Pollution Control Program Enforcement Section Chief, reported the City of Excelsior Estates owns and operates an extended aeration treatment plant that provides wastewater treatment for the city. The city is in violation of its state operating permit for exceeding effluent limits, failure to submit discharge monitoring reports, and failure to report bypasses. The city also has extensive inflow and infiltration in its collection system. Staff attempts to resolve the noncompliance through conference, conciliation, and persuasion has not resulted in compliance. Mr. Mohammadi recommended referral to the Office of the Attorney General.

No one was present representing the City of Excelsior Estates.

Commissioner Greene moved to **refer the City of Excelsior Estates to the Office of the Attorney General** for appropriate legal action; seconded by Commissioner Perry and unanimously passed.

#### **Wingate Subdivision**

Mr. Mohammadi reported Sallee/Ward Investment, Inc. owns and is developing the Wingate Subdivision located in Jackson County, Missouri. The total area of this site includes 9.35 acres part of which was disturbed to prepare development of 24 lots in Wingate Subdivision. Stormwater discharges from this site into an unnamed tributary of Swiney Branch. Sallee/Ward Investment, Inc. owns and is developing the Wingate Subdivision located in Jackson County, Missouri. Stormwater discharge from this site enters an unnamed tributary of Swiney Branch. Sallee/Ward Investment, Inc. has been issued a General Missouri State Operating Permit for Land Disturbance for this development. The company has failed to adhere to the requirements in the permit. Department staff inspected this site on December 22, 1999, April 28, 2000, June 5, 2000, and July 31, 2000 during which the site was found to

be in noncompliance with its operating permit and the Missouri Clean Water Law and regulations. As a result of these inspections, the company was issued three Notices of Violation. The violations include failure to properly establish, install and maintain adequate erosion control measures to prevent sediment from entering waters of the state; failure to revegetate disturbed areas after final grading; and causing pollution of waters of the state. The company responded to correspondence from the Kansas City Regional Office in regard to the violations at the site but they failed to take appropriate steps to correct the violations. The Water Pollution Control Program has attempted to enter into an informal negotiated settlement agreement with Randall Sallee, president of Sallee/Ward Investments, Inc., but the company has failed to respond to the department's correspondence. David Ward, Vice President of Sallee/Ward Investments, Inc., also owns and operates the Farmington Acres development in Jackson County, which currently has a Petition filed in Jackson County Court, by the Office of Attorney General, for many of the same violations previously mentioned. Mr. Mohammadi requested a referral of this matter to the Office of the Attorney General Office for litigation to bring this facility into compliance.

Mr. Tobin, representing Sallee/Ward, introduced David Ward and Randall Sallee and stated they deny that conference, conciliation, and persuasion was attempted in this case. Inspections did occur on the dates that Mr. Mohammadi indicated. Mr. Tobin indicated they responded with a proposal to correct the erosion problem and silt fencing was put in and seed was bought and put in.

Mr. Tobin noted individuals were hired in February to put more silt fencing in and no communication from the department was made until a subsequent reinspection was done. He continued that they had asked that someone from DNR meet at the location so they could look at what had been done. They were provided a copy of some best management practices literature. Mr. Tobin stated Mr. Ward had gone to seminars and believed that he was putting in the silt fencing in accordance with what was in that literature and what was presented at the seminars. He continued under the original letters that were provided to Sallee/Ward, there is an indication that there would not be an inspection within 72 hours of a rain event. Mr. Tobin noted he believes that some of these inspections occurred on the morning following a major rain event. It is believed that Sallee/Ward complied and went above what DNR suggested as for what would be required to stop any type of erosion. He stated his clients don't want major erosion occurring on any development that they have.

Mr. Tobin reported four written narrative reports were provided by the Department of Natural Resources with no indication as to where the problems were found or how they were supposed to do remedial work. He noted there is a demand by DNR for a fine without any suggestion as to any remedial work. Mr. Tobin asked the commission to take a look at the case and the evidence and the likelihood of success on the merits and possible damage that resulted. He noted he does not believe that there is any damage. Mr. Tobin stated he believes there were some minor erosion problems that were adequately addressed and taken care of by Mr. Ward.

Mr. Tobin noted they did not receive notification that the Farmington Acres matter had been referred to the Attorney General from the Clean Water Commission. A meeting was held in order to ask the DNR inspectors where the particular violations were. Mr. Tobin stated Mr. Ward sells the lots to individual builders and when he sells those lots to the individual builders, he doesn't have the ability to control their actions with regard to that specific site. Mr. Tobin continued until the DNR inspectors notify them of a particular site, there is no way to determine who is causing the problem. He noted this is the main reason that they did not agree to the amounts demanded by DNR for settlement of the Farmington Acres matter.

Mr. Tobin noted he had asked DNR if there was a connection between the Farmington Acres and the Wingate matters and he was assured that there wasn't. He stated they believe, that in this particular situation, there are some people in Farmington Hills that are upset with the developer for reasons unrelated to the silt and sedimentation that would go into waters of the state of Missouri. Mr. Tobin stated they believe that there may be some belief that since Mr. Ward is one of the bigger developers in the Grain Valley, Missouri area and the city of Grain Valley just recently implemented an erosion control inspection program for the individual builders, that DNR's reaction was connected with that somehow. He requested that the commission pay particular attention to the type of evidence that will ultimately be presented in a courtroom and see what the ultimate damage was to the environment. Mr. Tobin stated if the commission looks at all of these factors and at the cost factor that's involved and the ultimate goal, that it will be found that they have taken every step to comply with their duties and obligations and that they haven't violated the clean water laws.

Chairman Herrmann noted the land disturbance occurred in the development of the lots, not in the building of the individual homes on those lots.

Mr. Tobin stated the initial disturbance did.

Chairman Herrmann noted to hold an individual responsible who happens to be building a home on one of these lots is a stretch of the imagination. Where the possible erosion and siltation took place is in the development of the subdivision itself, not in the individual home building.

Mr. Tobin stated he is not sure that is entirely true because the particular erosion occurs on a particular lot and it can be caused by certain activities that occur on that lot by the individual builder. He suggested there is no evidence and no particular location or problem has been identified. Mr. Tobin continued that Mr. Ward no longer has ownership over any of the lots in Wingate and he has ownership of only one or two lots in the Farmington area and he is being held liable for the actions that possibly others have done.

Chairman Herrmann stated the regulations for land disturbance apply to five acres or more. It does not apply to a single residential lot.

Mr. Tobin responded they have been told that once the property has been transferred from the large development to an individual builder that the developer continues to be responsible despite the transfer of ownership.

Mr. Laux stated the permit makes the developer responsible for the life of the entire common promotional development. If the developer wants to sell a lot and not retain any responsibility for that lot, the permit contains a process called the individual lot certification process where the individual lot owner could become responsible for that particular lot. If that hasn't happened the developer is responsible for the common promotional development in its entirety and any contracts for sale of any portions of that should reflect those contractual responsibilities. Mr. Laux noted the permit very clearly covers any common promotional development through its entire life. If the developer wants to sell and get out, they have to go through the individual lot certification process and that is a part of the permit.

Commissioner Minton asked if once all the lots are sold he is absolved of that responsibility or at what point in time does that occur?

Mr. Laux responded their responsibilities would end when the site becomes stabilized as defined in the permit.

Commissioner Minton questioned if the developer is responsible until all lots are stabilized if the developer does not get a waiver from each individual he sells lots to.

Mr. Laux replied that is the case unless the permit has been terminated. There are situations where there are one or two lots that are developed years later. If it's not more than five acres, permits have not been required. Mr. Laux noted that will change when the five acres changes to one acre.

Chairman Herrmann stated Mr. Tobin originally said something about a referral to the Attorney General being a means of assessing a fine. He continued the commission's referral to the Attorney General in these matters is for the purpose of allowing people with legal backgrounds to make a determination regarding the matter. If the matter is eventually referred, it is not saying that Mr. Sallee and Mr. Ward are guilty. It is merely saying that we are giving them an opportunity to present their side of the story to the Attorney General's Office rather than to this body.

Mr. Tobin stated when the commission authorizes a matter to be referred to the Attorney General, they are implicitly authorizing the Attorney General to make the determination whether to bring a lawsuit on behalf of the State of Missouri against Mr. Ward. He continued that he believes both sides should have an opportunity before that occurs to provide information to the commission so the commission can decide if there is sufficient

evidence to go forward. Mr. Tobin indicated the evidence is vague from an evidentiary standpoint.

David Ward, Vice-President of Sallee/Ward Investments, stated they had attended two seminars in Lee's Summit on land disturbance. He noted they did present the individual lot question at that time and they were not told there was an individual lot release. Mr. Ward stated every time they received a notice crews immediately went out to make the repairs to stop the erosion. He stated they put up over 7,600 lineal feet of silt fence and about 300 bales of properly staked straw and did make the intent at stopping all the erosion on the property. Mr. Ward reported all the other area communities have enacted their own erosion control measures. He stated he feels he got caught in the middle where DNR forced Grain Valley to adopt its own controls.

Mr. Mohammadi noted he agrees this is not the stage to try the case. The department's evidence is going to be examined by a judge in case a lawsuit has to be filed to gain compliance.

Chairman Herrmann replied that was his point to Mr. Tobin. The department is required to support their position as well as Mr. Tobin has to defend and support his position before a legal body rather than this group.

Mr. Mohammadi noted land disturbance cases are very different than other cases. They disturb the land, remove the vegetation, and start selling the lots and they are gone versus municipalities that are there for a long period of time.

Commissioner Greene noted Mr. Tobin mentioned that inspections do not occur within 72 hours of a rain event and she asked if that isn't when the inspections should occur.

Mr. Mohammadi responded they have to maintain the best management practices and they did not have those in place when staff inspected. He noted he did not have the file and did not know whether they went after the rain event and collected samples.

Bruce Martin, Director of the Department of Natural Resources Southwest Regional Office, stated the permit actually requires the permittee to make the inspection of the site within 72 hours after a major rain event to make sure that their controls are still in place. He continued he would like his staff doing an inspection during a rain event to make sure that samples are taken and that compliance with the permit can be determined. The department does sample during rain events, or as close as they can. But the permittee is required to do it within 72 hours after a rain event to make sure maintenance is done on those control measures.

Mr. Tobin stated his point was that if they have 72 hours after a rain event to go out and inspect and to make the modifications that are necessary, it's improper for an investigation to occur within 10 hours of the rain event.



Commissioner Minton stated he is confused on how to proceed with this matter. He stated it appears the developer has acted with some diligence. Commissioner Minton continued if they were inspected prior to the modifications then he could see where staff would certainly have the argument and be very concerned that they were out of compliance. He questioned if staff has been to the site subsequently since the gentlemen contend they have addressed the situation to see if in fact that they are still out of compliance. Commissioner Minton noted he hesitates to refer something to the Attorney General with their workload if this comes down to just merely a matter of hours later that the violator was back in compliance.

Mr. Mohammadi stated staff inspected the site three times and remedies were exhausted. They should have prepared a stormwater pollution prevention plan before they proceeded with removing the vegetation.

Commissioner Hegi noted he would like to see some pictures of the site.

Mr. Mohammadi responded he's been in this business for 16 years and has yet to see one responsible party admit they did something wrong and accept responsibility for their action.

Commissioner Greene asked when the fencing was put up.

Mr. Ward stated the erosion control process is an ongoing process. He continued that you make improvements to your site continually after the rains because the site does change. He concluded that the fence on the property has been installed ever since the project began.

Commissioner Greene asked when the project began.

Mr. Ward responded September 1999 was when the first erosion control began and then it was modified after each rain or whenever necessary.

Commissioner Greene asked if there have been no visits since July 31, 2000.

Mr. Mohammadi responded there have not been.

Commissioner Kelly asked why the company failed to respond to correspondence from the department.

Mr. Tobin responded he does not know what is being referred to as they responded to all correspondence they received.

Mr. Mohammadi noted staff has not received a response to the offer to settle the case.

Commissioner Kelly asked how many letters have been sent that they did not respond to.

Mr. Mohammadi replied he did not have the file and couldn't answer that question. He noted the company failed to resolve the noncompliance which goes back to December 22, 1999, April 28, 2000, June 5, 2000, and July 31, 2000.

Commissioner Greene stated she agrees with Commissioner Minton about not knowing what to do on this. She thought possibly tabling the matter until the February meeting to allow time for more information.

Mr. Mohammadi asked what kind of information the commission would like to see.

Commissioner Greene responded possibly another visit to the site since the last visit was in July.

Commissioner Minton noted possibly photographs if there are any.

Mr. Mohammadi noted another visit to the site would not resolve the liability issue.

Commissioner Perry noted this would be prosecuting for four violations that happened over eight months between December 1999 and July 2000 during which time a lot has happened. She asked if these issues would not have been resolved if it had been turned over to the Attorney General's Office where the department and the Attorney General's staff would negotiate.

Mr. Tobin responded he is involved in the Farmington Acres lawsuit and has asked for the entire file and has not yet gotten it. He noted he respects every attorney at the Attorney General's Office but doesn't know what their caseload is. Mr. Tobin concluded in this particular situation he's going by the statements that were given to him by DNR that the four reports are the entire evidence that they have.

Commissioner Perry asked if he couldn't file a motion to dismiss before the hearing officer and let there be a legal determination?

Mr. Tobin responded they were sued in Circuit Court so they are in front of a trial judge in Jackson County.

Mr. Mohammadi stated they filed interrogatories and these were answered.

Commissioner Perry asked if the discussion was about another lawsuit rather than Wingate.

Mr. Tobin responded Farmington Acres has been brought but the focus needs to be on Wingate and what evidence there is. He stated the commission has to make a determination initially before you send to the Attorney General's Office.

Mr. Mohammadi stated if the evidence is poor, the Attorney General's Office will not proceed with the case. If additional evidence is needed, they direct staff to gather that because they believe the case is not adequately prepared.

Mr. Tobin stated because the only person who's penalized in that situation is his client with additional attorney fees and so forth. He continued it's cheaper to pay a fine than it is to litigate. Mr. Tobin stated when the Attorney General's Office suggests they pay a fine rather than litigate, they are ignoring the basic facts about what happened. He noted his client has to make a decision on whether he wants to pay a fine or go forward with the litigation.

Bill Bryan, Assistant Attorney General, stated that is not the way the Attorney General's Office operates. He reported when a referral comes in, each lawyer has a responsibility to review that file within 30 days and make a determination whether to proceed and how to proceed. Mr. Bryan stated that hasn't happened yet in this case. He noted he resents anyone giving the impression that a case is looked at for its dollar value.

Commissioner Minton moved to **refer the Wingate Subdivision matter to the Office of the Attorney General for appropriate legal action**; seconded by Commissioner Kelly and passed upon roll call vote as follows: Commissioner Greene-yes, Commissioner Hegi-no; Commissioner Kelly-yes, Commissioner Minton-yes, Commissioner Perry-yes, Chairman Herrmann, yes.

Commissioner Perry moved to **go into closed session** at approximately 1:45 p.m. to discuss legal, confidential, or privileged matters under section 610.021(1), RSMo; personnel actions under Section 610.021(3), RSMo; personnel records or applications under Section 610.021(13), RSMo or records under Section 610.021(14), RSMo which are otherwise protected from disclosure by law; seconded by Commissioner Greene and unanimously passed.

Chairman Herrmann announced the commission will reconvene at approximately 3:00 p.m.

Commissioner Greene left the meeting at this time.

Commissioner Perry moved to **reconvene the open session of the Clean Water Commission meeting** at approximately 3:50 p.m.; seconded by Commissioner Minton and unanimously passed.

### **St. Francis River Potential Effects On The Ben Cash Wildlife Area**

Robert Tisdale, Memphis District Corps of Engineers, read the following into the record. He noted it reflects the Corps' attitude toward the project and the desire for future relations.

On January 12, 2001, Assistant Attorney General William J. Bryan provided us a copy of a proposed Memorandum of Agreement between the Corps of Engineers, the Missouri Clean Water Commission, and the Missouri Department of Natural Resources. This letter expands on our District Counsel's letter of December 21 and expresses a commitment to address Missouri concerns in the St. Francis River Basin. We agree that an advisory committee of scientists, professionals, and local interests who have knowledge of the project area are a good proposal. Areas in which input from such a group could be beneficial are problem identification of suitable mitigation and management of mitigation lands already purchased.

Some of the other participants who should be included in such a group are the U.S. Fish & Wildlife Service, the Natural Resources Conservation Service, the Environmental Protection Agency. To address issues throughout the entire St. Francis River Basin, representatives for both Arkansas and Missouri should be included. State agency representation should include the Arkansas State Highway and Transportation Department, the Arkansas Soil & Water Conservation Commission, the Arkansas Department of Pollution Control, the Arkansas Game & Fish Commission, the Missouri Department of Transportation, the Missouri Department of Natural Resources, and the Missouri Department of Conservation, along with members of levee and drainage districts in the basin.

As a prelude to the formulation of an advisory committee, we are already working to assemble some key federal, state and local interests during this spring's Mississippi River Commission upstream trip. The purpose for engaging this group is to highlight the environmental needs of the basin and to initiate the development of a comprehensive strategy for addressing those needs.

We also agree that comprehensive basin studies would be beneficial to the identification of problems and needs and the formulation and implementation of project features that would aid in fulfilling our flood control and natural resource preservation responsibilities. Gauges for monitoring river stages have been installed throughout the basin and records compiled for each location. Periodic discharge and water quality measurements are collected at some locations.

We have developed a hydraulic model for the entire basin. We have contracted with a private architect/engineer firm to develop a sediment transport model for the St. Francis River from Lake Wappapello to Huxtable Pumping Station near the mouth of the river. The A/E firm has retained a nationally known sedimentation expert to aid in the development of the model. It is about sixty-five percent complete at this time with remaining components of the model scheduled for completion by the end of the year. The activities described in this model provide baseline data for a comprehensive study. When model development has been completed, we will be able to make runs and locate and estimate the potential for head cutting and sediment deposition.

Data from existing piezometers within the St. Francis River basin are available to MDNR and MDC. Additional piezometers will be installed as needed to monitor the authorized flood control works in the basin. Data from such future piezometers can also be made available.

The total mitigation lands authorized for acquisition in the St. Francis Basin project is 13,500 acres. The mitigation land is to be acquired from willing sellers. Of this amount, 12,590 acres are to be purchased in Arkansas and 910 in Missouri. To date, 13,068 acres have been acquired; 662 acres in Missouri. The remaining mitigation to be purchased in Missouri is 248 acres. No mitigation land has been acquired in Missouri for several years. Tracts proposed by the Corps for purchase in the last six to eight years were not accepted by the state because of the existing land use, tract size, location, etc. We would welcome the assistance of the Missouri resource agencies in locating suitable tracts for the remaining mitigation land. We would also like to license existing Missouri mitigation land to the state for management until the St. Francis Basin project is completed and mitigation lands can be permanently transferred. Mitigation lands acquired in Arkansas were licensed to the Arkansas Game and Fish Commission for management some years ago.

We appreciate your continued willingness to work toward resolution of concerns related to channel restoration in the vicinity of Highway 90 and the St. Francis Basin as a whole. If you have any questions or need additional information, please contact Robert Tisdale, Deputy for Project Management, 544-3620.

Richard Simmons, Clay County Arkansas Conservation District, reported the Arkansas Highway 90 bridge has been under siege by the blockage for a number of years. He stated the blockage has accumulated over a number of years but is accelerating at a much faster pace. The danger to the bridge has been emphasized along with the integrity of the levee. Mr. Simmons stated the levee holds the water back from innocent people with the watershed of the St. Francis going almost to the south city limits of St. Louis. He stated the levee is under tremendous pressure. The Corps recently established a satellite monitoring river gauge due to concern about the river stage at the blockage. Mr. Simmons encouraged the commission to look at the area. He stated he hoped that by working together the sensitive area at the blockage can be addressed.

Commissioner Minton moved to **direct the Attorney General's Office to continue working with the Army Corps of Engineers to establish a Memorandum of Agreement between the Army Corps of Engineers, the Missouri Department of Natural Resources, and the Missouri Clean Water Commission to facilitate and establish a watershed agreement for the St. Francis River Basin**; seconded by Commissioner Perry and unanimously passed.

**Commission Action On Matters To Be Referred To The Office Of The Attorney General**

**Barbour Concrete Company**

Commissioner Minton moved to **refer Barbour Concrete Company to the Office of the Attorney General for appropriate legal action**; seconded by Commissioner Kelly and unanimously passed.

**Frontier Town Development**

Mr. Mohammadi, Water Pollution Control Program Enforcement Section Chief, reported Frontier Town-Missouri, Inc. owns and had begun developing the proposed Frontier Town II theme park in Stone County. This development consists of a 249-acre tract adjacent to an unnamed tributary to Railey Creek near the town of Reeds Spring. Approximately 150 acres of the site was proposed to be disturbed. Topsoil was removed and sold from approximately 70-100 acres of land. On June 19, 1998 a General Permit for Land Disturbance was issued to Frontier Town-Missouri Inc. for land disturbance activities at the Frontier Town II development site. Activities at this site were occurring in accordance with the permit requirements until the end of 1999. After this time, it seems that the funding for the project ran out and all work at the site ceased. Due to the lack of attention, at the site, the erosion control measures and devices became outdated. During an inspection in October, 1999 two areas at the site were found to have inadequate or damaged erosion control devices, and a letter was sent by the regional office in October, 1999 to a representative of the corporation requiring the violations to be addressed. A follow-up inspection was performed in April, 2000, during which staff observed several locations where large amounts of silt and gravel had left the site and entered a losing stream tributary of Railey Creek. In May, 2000, a Notice of Violation was issued for failure to maintain erosion control measures and release of silt and gravel into waters of the State. Inspections in May and July, 2000 revealed that no improvements had been made to the site and erosion was continuing. As a result, in July, 2000 a Notice of Violation was issued to four representatives of the corporation and enforcement action was requested in August, 2000. The department has attempted to contact the President of Frontier Town-Missouri, Inc. to resolve this matter through an informal negotiated settlement agreement. However, the company has failed to respond to the department's correspondence. Stone County is preparing to sue the corporation for a \$250,000 bond that was purchased for remediation of the site. The county wants to use the bond money to return the site to its original condition, and the Attorney General's Office is interested in joining Stone County in their lawsuit against Frontier Town-Missouri Inc. Mr. Mohammadi recommended that this matter be referred to the Office of the Attorney General to pursue litigation to bring this site into compliance.

No one was present representing Frontier Town Development.

Commissioner Hegi asked what the estimated cost of restoring the site would be.

Bruce Martin, Director of the Southwest Regional Office, stated he toured the site with the bond agent for the county and they believe there is a way to restore the site for that amount of money.

Commissioner Hegi asked why the Attorney General needs to be involved in the case.

Mr. Mohammadi responded staff is pursuing the company for violation of their permit because they did not control the erosion. This would be a joint action with the state and Stone County.

Commissioner Perry moved that **Frontier Town Development be referred to the Office of the Attorney General for appropriate legal action**; seconded by Commissioner Hegi and unanimously passed.

### **Milan Municipal Wastewater Treatment Plant**

Mr. Mohammadi, Water Pollution Control Program Enforcement Section Chief, reported the City of Milan owns and operates a three-cell municipal wastewater treatment lagoon under the authority of Missouri State Operating Permit MO-0048151. Approximately half of the inflow into the lagoon is domestic waste and the other half is industrial wastewater from Con-Agra Frozen Foods. The city is authorized to discharge from the lagoon into the East Fork of Locust Creek, and land-apply sludge from the primary cell of the lagoon system. The City of Milan has historically had difficulty in meeting effluent limits in their lagoon system. Depending on the time of year, the lagoon routinely discharges effluent containing large amounts of algae and high ammonia levels. Algae blooms in the lagoon cells lead to high amounts of suspended solids being discharged to the receiving stream. This has led to numerous complaints concerning discoloration of the water in the receiving stream. In an effort to remedy the effluent problems the city has decided to upgrade their three-cell lagoon to a mechanical treatment system. A schedule of compliance for upgrade of the city's wastewater treatment plant was placed in the city's operating permit in August, 1998. Due to delays by the city several of the deadlines in the compliance schedule were missed. In response to the missed deadlines and effluent violations the department issued an Abatement Order to the city in March, 2000 requiring that the treatment system be upgraded and set out a schedule for those upgrades. The city appealed the Abatement Order, and after several meetings with city officials to discuss settlement of the appeal no resolution has been reached. The city has now put upgrade of the treatment facility on hold because it is anticipated that their state revolving fund loan will not cover the cost of the upgrade and there is a lack of commitment for funding from the city's main industrial user. Mr. Mohammadi concluded the city has made some efforts but at a very slow pace. He requested

referral of the Milan Wastewater Treatment Plant to the Office of the Attorney General to move toward compliance at a faster pace.

Responding to Commissioner Perry's question, Mr. Mohammadi said Con-Agra is not the Premium Standard processing plant.

Commissioner Perry asked if the industrial user has to do pretreatment.

Mr. Mohammadi replied this was one of the concerns when the Abatement Order was issued to the city. The city does not have a plan to require Con-Agra to pretreat its waste before going to the city.

Commissioner Perry asked if there isn't an industrial permit involved.

Mr. Mohammadi responded the city is not big enough for pretreatment but after observing the violation of the permit, the abatement order required that the city develop a pretreatment plan. Con-Agra is the only industry in the city and they are not defined as a categorical industry because their waste compares to domestic sewage.

### **Milan Municipal Water Treatment Plant**

Mr. Mohammadi, Water Pollution Control Program Enforcement Section Chief, reported the City of Milan owns and operates a municipal drinking water treatment plant under the authority of Missouri State Operating Permit MO-G640042. The plant is located within the city limits of Milan and is authorized to discharge filter backwash water to the East Fork of Locust Creek. The permit also allows the land application of water treatment plant sludge. In March, 2000 staff from the Public Drinking Water Program inspected the water treatment plant and discovered several deficiencies concerning the operation and maintenance of the plant. One of the deficiencies included the need for sludge in the sludge holding basins to be removed and land applied. Contrary to the department's request the city failed to remove the accumulated sludge in the holding basins. This resulted in a sludge back up into the treatment plant that disrupted the operation of the plant. To restore operation of the plant the city ran a temporary line to pump sludge from the plant clarifier to the sludge holding basins. Since the holding basins were filled to capacity, the sludge bypassed the basins and flowed into the East Fork of Locust Creek. The bypass was discovered by Water Pollution Control Program personnel on July 25, 2000 during an inspection of the East Fork of Locust Creek below the city's wastewater treatment lagoon. During that inspection the investigators noticed black sludge deposits in the creek below the outfall of the city's water treatment plant sludge holding basins. Water samples were collected and the results showed in-stream aluminum levels of 19,000µg/L, which is above the Water Quality Standards limit of 750µg/L. On August 22, 2000 two Notices of Violation were issued to the city for discharge of a water contaminant, failure to operate and maintain the sludge holding basins, and violation of the Water Quality Standards. On July 20, 2000 the city stopped pumping sludge



to the sludge holding basins and began pumping the wasted sludge to the city sanitary sewer lagoon until the sludge holding basins could be cleaned out. The city is currently constructing a new water treatment plant to replace the old plant. The construction permit for the new drinking water plant has expired and the plant is not complete, with no projected completion date in sight. Mr. Mohammadi requested referral of the Milan Municipal Water Treatment Plant to the Office of the Attorney General for appropriate joint legal action.

N. William Phillips, city attorney, stated the city of Milan has been working on these problems for quite some time. He provided the commission a copy of a news release regarding Con-Agra that stated Con-Agra will close its operation in Milan effective December 31, 2001. Mr. Phillips reported the city's discharge permit was modified in 1997 lowering the nitrogen limits for East Locust Creek. Revenue bonds were approved to build a new wastewater treatment plant about a year later. Discussions have taken place with Con-Agra to pay for part of the wastewater treatment plant and regarding committing for a period of time to help pay for the wastewater treatment plant. Mr. Phillips stated if Con-Agra is not there the plant is not needed. The city has paid \$200,000 to design this plant and it now appears they will not need it. The city has a pretreatment ordinance and a pretreatment plant built about ten years ago. Con-Agra has been operating this and they do have requirements regarding what they can put into the wastewater treatment facility. Mr. Phillips stated Milan has violated the law and they continue to work with the Department of Natural Resources to address the problems. He suggested the commission refer the matter if the problems are not resolved within 120 days.

Mr. Phillips reported the water treatment plant is about one and a half years past the time it was to be completed but it should be operational this week. He stated the city has been working with the Department of Natural Resources on this matter also.

Mr. Phillips asked that the matter not be immediately referred to allow the city time to determine if someone else will take over the Con-Agra facility.

Commissioner Perry asked if they had announced that they will sell to Milan Poultry.

Mr. Phillips replied in June they transferred all the assets of that plant into Milan Poultry Company which is a Missouri Corporation. The city does not know who Milan Poultry Company is. Mr. Phillips noted in talking to Con-Agra's attorney, he has indicated the wastewater treatment problems did not bring about the closing of the plant. The city putting pressure on them made them announce the closing sooner than scheduled.

Commissioner Minton asked how long the city anticipates it will be before Con-Agra actually shuts down the plant.

Mr. Phillips responded Con-Agra will begin closing down the lines June first. He stated he believes the plant will be closed by December 31. Mr. Phillips noted the plant loads around

60 percent of the sewage lagoon so the city will need to make some improvements costing around \$200,000 without Con-Agra. He stated he will meet with Milan Poultry Company next week to find out what their plans are. Mr. Phillips noted they will discuss with Premium Standard Farms the possibility of them using the plant.

Commissioner Perry asked if the city has considered seeking a variance.

Mr. Phillips stated the city is meeting the limits at this time because of interim actions by Con-Agra to improve their discharge into the pretreatment and the wastewater treatment plant.

Mr. Mohammadi stated the city has taken some interim steps over a long time period but this was as a result of enforcement action. The city has been meeting the effluent limits. Mr. Mohammadi recommended granting the additional time requested by the city by referring the matter contingent upon no agreement being reached to resolve the noncompliance within the next 120 days.

Harry Bozoian, Assistant Attorney General, stated they are working toward a solution although progress has been slow. He stated the city is responsible for meeting Water Quality Standards, not Con-Agra. The city has not had an adequate pretreatment program. The ordinance addresses suspended solids and BOD, not ammonia. The enforcement of that ordinance is questionable. Mr. Bozoian noted the press release states that Milan Poultry Company has bought the facility and taken over operations. It appears that Milan Poultry Company just needs another supplier. Mr. Bozoian stated the city has ignored Con-Agra and they need to address this. He continued the city understands he is representing the department on an appeal of an Abatement Order and that he cannot force them to do anything. Mr. Bozoian stated the city has had numerous past violations in the general criteria of the Water Quality Standards and the specific limitations. He provided a picture of the East Fork of Locust Creek below the discharge approaching Linn County. Mr. Bozoian stated he has received calls from the Linn County commissioners regarding this discharge and the appearance of the creek. He continued the algae is intense in the creek looking almost like antifreeze. This comes directly from the third cell wastewater lagoon. Mr. Bozoian stated he asked for interim measures until a new wastewater treatment plant is built when he began working with the city. Con-Agra did not commit to an interim proposal and there is still nothing formal submitted. Mr. Bozoian stated he believes the city and the Office of the Attorney General can work toward an adequate resolution. The problem is the time it is taking to get it completed. The referral is needed to make sure the city builds a new wastewater treatment plant in a timely fashion if needed.

Mr. Bozoian stated regarding the water treatment plant he has observed the stream where the sludge entered into East Fork of Locust Creek and it is similar to the photo of the wastewater treatment plant discharge.

Responding to Commissioner Perry's question regarding compliance, Mr. Bozoian stated the city has basically been in compliance with specific parameters of the NPDES permit. There have been gross violations of the general criteria.

Commissioner Perry asked if there will be some harm to the water quality if enforcement action is not begun within 120 days.

Mr. Bozoian stated he believes there will be since the ammonia build up is the greatest in those wastewater treatment plants. The plant operator has reported to the Northeast Regional Office that the ammonia buildup in the third cell lagoon is very high. Mr. Bozoian requested the commission refer the matter and he will take into consideration Mr. Phillip's and the commission's concern regarding Con-Agra.

Ken Midkiff, Director of the Ozark Chapter Sierra Club, stated the East Fork of Locust Creek was on the impaired waters list and was taken off in 1998. An attempt to have the creek added back to the list failed because there was not enough data on the water quality in the creek. Mr. Midkiff stated this creek is now contained in the Memorandum of Understanding between EPA and DNR for enhanced monitoring. The Sierra Club insisted this be on the list due to a number of calls from individuals downstream. If the data shows at the time of the next 303(d) list that Locust Creek is impaired, stricter Water Quality Standards will need to be met. Mr. Midkiff noted now is the time to address the problem. The concern is that Premium Standard Farms will purchase the plant. He requested the matter be referred to the Office of the Attorney General.

Chairman Herrmann asked if the city does not have an effective pretreatment ordinance relative to ammonia removal.

Mr. Williams stated a pretreatment ordinance relating to ammonia has been drafted and sent to Con-Agra and it is to be enacted February 13 whether Con-Agra is there or not.

Mr. Mohammadi stated the plan has been submitted but not yet approved. There were deficiencies in the plan and the city has not yet responded.

Commissioner Herrmann asked if the pretreatment ordinance was in effect and someone else moved into the plant if they would have to comply with this ordinance.

Mr. Williams said they would have to have guarantees if someone else wanted to operate the plant.

Chairman Herrmann stated he believes there needs to be continuous communication between the Office of the Attorney General and Water Pollution Control Program working toward a solution. He suggested making a referral contingent upon not reaching a satisfactory resolution to the matter by May 23 might be an avenue to satisfy the parties.

Commissioner Hegi moved to **refer the City of Milan Municipal Wastewater Treatment Plant and the City of Milan Municipal Water Treatment Plant to the Office of the Attorney General contingent upon a satisfactory resolution not being reached by May 23, 2001**; seconded by Commissioner Kelly and unanimously passed.

### **Pacific Heights Subdivision**

Mr. Mohammadi, Water Pollution Control Program Enforcement Section Chief, reported Pacific Heights Subdivision, owned by Venture Properties, Inc., is a new housing development in Jefferson County with an incomplete sewage treatment facility. The project will ultimately consist of 74 homes. A construction permit was issued on August 21, 1998, for an extended aeration system with sand filter and chlorination system. In December, 1999, the facility was on line, releasing effluent to the Meramec River from three homes. Since there had been no operating permit issued, a Notice of Violation was sent to the developer for discharging without a permit. A follow-up inspection on February 7, 2000, indicated that there were additional problems. Construction of the facility was still incomplete, and the project had significant deviations from what was approved in the construction permit, which had expired in August, 1999. Venture Properties was advised that the plant must be immediately taken out of service. Sewage from the houses that had been connected would have to be pumped and hauled. Reportedly, this has been done. The St. Louis Regional Office requested the Jefferson County Building Department not to issue any more occupancy permits until the situation at the facility is corrected. In another inspection in February, 2000, it was found that the facility was still discharging without a permit. Another Notice of Violation was issued. Negotiations to resolve the violations were initiated in April 2000. After several months of negotiation, a proposed Settlement Agreement was delivered to Mr. Crawford, owner of the development, on July 11, 2000. It provided for corrective actions to bring the facility into compliance and payment of a civil penalty. As of August, 2000, there has been no reply from Venture Properties to the proposed Settlement Agreement. Mr. Mohammadi requested the matter be referred to the Office of the Attorney General.

No one was in attendance representing Pacific Heights Subdivision.

Commissioner Kelly moved to **refer the Pacific Heights Subdivision to the Office of the Attorney General** for appropriate legal action; seconded by Commissioner Perry and unanimously passed.

### **Commission Action On November 8, 2000 Meeting Minutes**

Commissioner Perry moved to **approve the November 8, 2000 meeting minutes** as submitted by staff; seconded by Commissioner Hegi and unanimously passed.

**Other**

Ken Midkiff, Ozark Chapter Sierra Club, reported the commission is aware of the problems with Simmons in Southwest Missouri. He noted they consider the Simmons facility to be a proven, chronic and habitual polluter of the waters of the states of Missouri and Oklahoma. Mr. Midkiff stated the operation has had several spills of raw sewage, chlorine and overloads of other water contaminants that have lead to both chronic and acute water quality degradation. He continued that some of the worst spills have lead to the destruction of all aquatic life in Cave Springs Branch. The Concerned Citizens for Green Country Conservation have formed a water watchers team that takes regular samples of Cave Springs Branch which are then taken to an EPA-certified lab. Mr. Midkiff stated the samples have demonstrated that the contamination of Cave Springs Branch has never really ceased. He continued it is clear that Simmons does not operate its wastewater treatment facility in a manner that is in compliance with the Water Quality Standards nor the conditions of its NPDES permit. Mr. Midkiff reported the Missouri Department of Natural Resources has on one occasion suspended Simmons' discharge permit and the Office of the Attorney General has filed several actions and several counts of violations of the consent decree. He asked that any more violations of Water Quality Standards or permit conditions result in a permanent revocation of Simmons NPDES wastewater discharge permit. Mr. Midkiff stated the commission does not have the authority to shut down the packing plant but it does have the authority to prevent them from discharging waste to the waters of the state. He asked that Simmons be required to install a closed-loop system and to install monitoring wells down gradient from its lagoons to ensure that there are no leakages to the groundwater.

Mr. Midkiff stated the Missouri Department of Natural Resources and the Missouri Clean Water Commission have full statutory authority to revoke a NPDES wastewater discharge permit for continuing contamination of waters of the state. He asked that the Clean Water Commission and the Office of the Attorney General hold Simmons firmly accountable and that any further violations of Water Quality Standards or permit conditions result in permit revocation.

Harry Bozoian, Assistant Attorney General, stated Simmons may have a response to anything he would say so he will not make a statement but would be happy to answer questions.

Chairman Herrmann suggested taking the matter up during the February meeting with a directed response from staff and the Attorney General's Office and Simmons so that all sides can be heard before the commission makes a decision.

Mr. Bozoian stated Mr. Midkiff is correct that 40-50 violations of the consent judgment have been alleged. These are allegations at this point and probably should not be taken up until after the court hearing which will be held in March or April.

Mr. Midkiff stated he believes the Office of the Attorney General is doing something assertive and he is not asking for commission action at this time. If in the future Simmons causes other water quality problems in Cave Springs Branch, he asked that the commission and the Office of the Attorney General act quickly to revoke that permit.

Mr. Bozoian stated March might be an appropriate time for an update on the issue.

Commissioner Hegi stated he noted the complaints are coming from Northeast Oklahoma. He asked if they are as concerned about their water as they are about Missouri's.

Mr. Midkiff stated they are. They have also had concerns about Oklahoma lakes and have filed similar complaints on these. Cave Springs Branch flows for about one-half mile. Simmons discharges into it where it enters Oklahoma so there is a very short stretch that is actually in Missouri.

## **LEGAL MATTERS**

### **Sharpe Land and Cattle Company**

Dana Kaiser, Hearing Officer for appeal number 343, reported Sharpe Land and Cattle is a concentrated animal feeding operation in LaBelle, Missouri. The facility operated under a permit from June 1998 to June 2000. On June 16, 2000, the Missouri Department of Natural Resources issued a modified permit substantially increasing Sharpe's monitoring requirements. Sharpe appealed the modified permit and on November 3, 2000 filed a motion seeking a temporary stay of the new monitoring requirements pending final disposition of their appeal. Ms. Kaiser explained this motion is to keep everything in place until there can be a final decision on the merits of the appeal. She reported that she prepared a recommended decision that was furnished to the commission. Ms. Kaiser noted that appellant's attorney and the Assistant Attorney General handling this matter are present but have no comments.

Commissioner Perry moved to **approve the recommended order granting the temporary stay regarding Sharpe Land and Cattle Company**; seconded by Commissioner Kelly and unanimously passed.

### **Dismissal of El Rancho Travel Center Appeal**

Deborah Neff, Assistant Attorney General, reported the El Rancho Travel Center was issued an Abatement Order due to noncompliance with its Missouri State Operating Permit. This abatement order was then appealed. El Rancho Travel Center has built a new facility complying with the abatement order. El Rancho Travel Center has now filed a dismissal of

appeal number 299. Ms. Neff requested the commission sign the order dismissing this appeal.

Commissioner Hegi moved to **dismiss appeal number 299 El Rancho Travel Center**; seconded by Commissioner Kelly and unanimously passed.

### **Dismissal of Johnson County Egg Farm Appeal**

Deborah Neff, Assistant Attorney General, reported this appeal was filed by the Ozark Chapter of the Sierra Club on behalf of its members. The commission is dismissing this appeal on the basis that it does not have jurisdiction to hear this appeal. Ms. Neff noted this is the matter on which Maxine Lipeles requested that the commission amend the dismissal order to state without prejudice and to also state that, should the law on this matter be amended, that they be allowed to refile their appeal within thirty days. Ms. Neff requested the commission enter an order dismissing this appeal and recommended they do so without prejudice. She made no recommendation on being allowed to refile the appeal in thirty days should the law be changed.

Commissioner Perry moved to **dismiss appeal number 355 Johnson County Egg Farm without prejudice**; seconded by Commissioner Hegi and unanimously passed.

### **Dairy CAFO Operation**

Tony Boone, Boone Consulting, reported he has been retained by Sharpe Land and Cattle Company to lay a groundwork for the direction they want to go in handling their dairy manure solids. He stated they would prefer to separate the solids out and use on a semi-solid basis. This can be land applied as an agricultural fertilizer at agronomic rates or it can be composted and marketed. Mr. Boone stated by separating the solids out, a cleaner liquid is obtained. Boone Consulting and Sharpe Land and Cattle have been discussing with EPA the possibility of including a discharge for CAFOs. Mr. Boone noted all CAFOs are not alike and he believes the dairy operation has a lot cleaner water. A gray water is generated and they would like the opportunity to separate this water out and treat it and discharge rather than putting it in with the wastewater. Mr. Boone stated there is a possibility that EPA will allow a discharge for CAFO units. Sharpe is looking at being able to treat the gray water from their washdown of the milking parlor to be able to treat and discharge that. Mr. Boone stated the water can be utilized more agronomically and economically for irrigating crops during the seasons when it is needed. He noted they want to be proactive with an alternative they believe will work. Mr. Boone noted the primary occupation of Sharpe Land and Cattle Company is hiring men and women that are being rehabilitated from alcohol and drug problems. He recommended that CAFOs be allowed a permit to discharge into waters of the state if there is adequate treatment.

**Other**

Ed Knight, Director of Staff, informed the commission a short training session has been scheduled for the commission for 6:00 p.m. March 20 on alternative small flows wastewater systems.

**Financial Disclosure Form**

Ed Knight, Director of Staff, reminded the commission to fill out their financial disclosure form and return it to the Missouri Ethics Commission. Fines are assessed if the form is not by the deadline.

**Legislation**

Ed Knight, Director of Staff, reported on Senate Bill 312, third party appeal legislation, that is being sponsored by Senator Caskey. Senate Bill 256 is an effort to fix the Moates Appeals Court decision in the Pulaski County Sewer District case stating that they did not have authority to force people to hook up to their district. This bill is also sponsored by Senator Caskey. Senate Bill 15 changing the makeup of the Missouri Clean Water Commission has been filed by Senator Mathewson. The bill proposes to add two additional slots that would be representative of local governments.

**Future Meetings**

Ed Knight, Director of Staff, reported the Kansas City Chamber of Commerce has again requested that the Clean Water Commission participate in a reception along with the Air Conservation Commission and Hazardous Waste Commission. This has been scheduled for October 24 in Kansas City. The commission will hold its meeting on October 25 in Kansas City.

Mr. Knight reported a meeting has been scheduled for February 27 to allow a briefing on groundwater regulations that will set groundwater standards to allow the commission to adopt standards that are less stringent than drinking water standards in some areas of the state. The legislature has granted the Clean Water Commission authority to adopt these rules. The Division of Environmental Quality has a draft regulation they would like to bring to the commission on an informal basis for input before it is filed with the Secretary of State. A public hearing on the Intended Use Plan for the state revolving fund has also been scheduled for February 27.



**Adjournment**

There being no further business to come before the commission, Chairman Herrmann adjourned the meeting at approximately 5:25 p.m.

Respectfully submitted,

Edwin D. Knight  
Director of Staff